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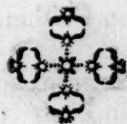
BEFORE the FIRST ACT

Of the TRAGEDY of

E L V I R A,

By DAVID MALLET.

*Long before the Beginning of this Play.* BAYES.



L O N D O N :

Printed for R. FRANCKLIN, in Russel-Street,  
Covent-Garden.

AN ACT

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Of the Tragedy of

ELVIRA

By DAVID MALLETT.

From before the Beginning of this Play. BY THE



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Printed for R. FRANKLIN, in RUSSELL-STREET,  
COVENT-GARDEN.

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A short STATE of the CASE, with Relation to a CLAIM made by RICHARD FRANCKLIN, Bookfeller, on DAVID MALLET, Esq; on Account of some COPIES which are inserted in the WORKS of the late Lord BOLINGBROKE, publish'd by Mr. MALLET, and which were originally printed by RICHARD FRANCKLIN.

IN the quarto Edition of the *Works of the late Lord Bolingbroke*, Price 3l. 15s. in Sheets, publish'd by Mr. MALLET, the Reader will meet with the following Tracts, *The Occasional Writer, the Vision of Camille, Answer to the London Journal, Answer to the Defence, &c. Remarks on the History of England, by Humphry Oldcastle, Esq; The Final Answer, Dissertation upon Parties.*

THAT these Tracts have been the undoubted and undisputed Right of Mr. FRANCKLIN for many Years, (the greater Part for upwards of twenty Years) is a Fact too well known to be called in Question. They were printed by Mr. *Francklin* (*The Occasional Writer* and *The Final Answer* excepted, which were printed as Pamphlets) first in the Paper called the *Craftsman*; afterwards in Volumes, and since that Time separately, and have passed through several Editions. A valuable Consideration was long ago given to the supposed Author of the *Craftsman*, for his Share in the Property of those Pieces, and the whole is vested in Mr. *Francklin* only; who, during the Life of Lord *Bolingbroke*, continued the Publication of them, without any Lett or Molestation whatever from his Lordship.

WERE the Public to be informed of the Hardships which Mr. *Francklin* underwent, the Losses he sustained, the Prosecutions and Imprisonments he suffered on Account of some of those Papers, they would perhaps be inclined to think that, how valuable soever the Copies might be, they were very dearly purchased.

THAT Lord *Bolingbroke* did himself imagine those Copies to be the Property of Mr. *Francklin* doth sufficiently appear,



as he never during his Life-time obstructed him in the Enjoyment of them; and that, when he made the Will, on which Mr. Mallet's Claim is founded, he was of the same Opinion is evident from these Words in it, after having nominated the *Remarks on the History of England* and the other *Traacts* printed by Mr. FRANKLIN, his Lordship says, *I do hereby, AS FAR AS BY LAW I CAN, give and assign, &c.*

THE Law we know in Regard to literary Property, and the Rights of Authors, Booksellers, Printers, &c. is extremely vague and uncertain; and no Ways have yet been found out to supply the Deficiency in this Point, but referring to general Custom in the Booksellers Trade, and an honourable Agreement between the Parties concerned.

MR. *Francklin's* Right is supported by Articles of Co-partnership between Mr. *Amburst* and him, for writing and printing the Paper called the *Craftsman*; Mr. *Francklin* paid to Mr. *Amburst* five Guineas weekly for his Moiety; and when the Essays were collected into Volumes, he bought of Mr. *Amburst* the sole Property and Right of printing them for his own Use and Benefit. Mr. *Amburst* was the only known or supposed Author of that Paper, and whatever Help or Assistance he might have, the Copy always went to the Press in his Hand, nor did Lord *Bolingbroke* ever send a single Line to the Printer of those Papers in his own Hand-writing. In this indeed, if Lord *Bolingbroke* was really the Author of any of these Essays, which Mr. *Francklin* was taken up for, \* he had some Sort of Prudence in not claiming the Copy of them in his Life-time, as it might have made him liable either to have been discovered by Mr. *Francklin*, who had great Offers made him for such Information; or have been obliged to pay Mr. *Francklin's* Expences in Law-suits and Imprisonments for some of those very Papers, which amounted to upwards of a thousand Pounds.

So many Years therefore had Mr. *Francklin* been secure in his Property, that he could have no Reason to fear any Infringement of it. That honourable Attempt was, it seems, reserved for DAVID MALLET, Esq; who, on the Death of  
Lord

\* Mr. *Francklin* was taken up for the Vision of Camille, for the *Craftsman* No. 223. for the *Craftsman* No. 224. and for No. 237. all containing Remarks on the History of England, by Humphry Oldcastle, Esq;

Lord *Bolingbroke*, took Care to inform the World that he should publish a compleat Edition of ALL his Works, without considering the Claim which Mr. *Francklin* must have, if the before-mentioned Pieces were inserted, and which make near a fourth Part of the Whole: However, Mr. *Millar*, Mr. *Mallet's* Bookseller, did make some Proposals of Agreement concerning those Tracts published by Mr. *Francklin*. But in that Interview Mr. *Millar* and Mr. *Francklin* could by no means agree, Mr. *Millar* offering too small a Sum for so large a Share as they made in the Works. Mr. *Mallet* soon after published his Edition, together with all those Papers and Tracts, which were the Property of Mr. *Francklin*, who in a short Time afterwards published the following Advertisement in the News-papers;

*In the Press and speedily will be published, neatly printed in FIVE  
POCKET VOLUMES, Price 15s.*

All the Works of a late celebrated AUTHOR,  
CONTAINING HIS  
DISSERTATION upon PARTIES,  
OLDCASTLE's REMARKS on the History of England,  
A Collection of POLITICAL TRACTS, &c. &c. &c.  
To which will be prefixed, an OCCASIONAL PREFACE by  
the EDITOR.

Printed for R. FRANCKLIN in *Russel-Street, Covent-Garden.*

MR. MALLET endeavoured to put a Stop to this Advertisement by intimidating the Printers of those Papers, which proving ineffectual, Methods of Agreement were by the Intervention of Friends proposed on each Side, and it was at last agreed to refer the whole Matter to the Arbitration of two Gentlemen, whose Characters were unexceptionable, and to submit it entirely to their Determination. To this both Parties consented, as the most probable Means of avoiding the Trouble and Expence of Law-suits. Accordingly Mr. *Draper* (Partner with Mess. *Tonson* of the Strand) Bookseller, was fixed on by Mr. *Mallet*, and Mr. *Wotton*, late of *Fleet-Street*, Bookseller, by Mr. *Francklin*; both Men, whose known Worth and Integrity, as well as their Experience in, and Knowledge of Business, contributed to render them the best Judges in a Cause of this Nature. The Parties all met the 21st Day of *March*, 1754; at the *Bedford Arms* in *Covent-Garden*, when, after some Discourse of the Purport of their Meeting,

Meeting, Mr. Draper proposed Bonds of Arbitration, Mr. Francklin approved of it, but Mr. Mallet objected to it, saying *there was no Occasion for it, as he hoped they were both MEN OF HONOUR*, and as such himself, declared, *he would abide by the Decision of the two Referees*; but at the same Time thought it was proper to enter into some Agreement in writing; accordingly his own Referee, unacquainted with the Forms of Law, drew up the following, which was sign'd by both Parties.

MARCH 21, 1754. It is this Day agreed between David Mallet, Esq; and Mr. Richard Francklin, to refer to Mr. Thomas Wotton and Mr. Somerset Draper, what Consideration the said Mr. Mallet shall give the said Mr. Francklin for his Claim on the Works of the late Lord Bolingbroke, and all future Editions of the said Works.

D. MALLET.

R. FRANCKLIN.

WHEN this Agreement was sign'd, both Parties were examined, the Substance of their Claims taken down in writing, and every Circumstance enquired into with the utmost Care and Assiduity. Mr. MALLET and Mr. FRANCKLIN retired into another Room, while the Referees debated on the Affair, who found it necessary to consider it farther; \* they adjourn'd to the 28th of March, when they met, agreed upon, and sign'd an Arbitration, and then went to the Bedford Coffee-house to meet Mr. Mallet and Mr. Francklin, who were appointed to be there to wait their Determination, when Mr. Draper gave one Copy of their Award to Mr. Francklin, and Mr. Wotton gave another to Mr. Mallet, both of them sign'd with their Names, and is as follows,

MARCH 28th, 1754. We the underwritten, to whom David Mallet, Esq; and Mr. Richard Francklin have refer'd the Consideration of what Sum the said Mr. Mallet shall give the said Mr. Francklin for his Claim on the Works of the late Lord

\* Before they adjourn'd, Mr. Wotton ask'd Mr. Mallet if he printed the Pieces, which Mr. Francklin laid Claim to, from a Manuscript of Lord Bolingbroke's, or from Mr. Francklin's printed Copy, Mr. Mallet's Answer was, from the printed Copy; but being apprehensive that such an Answer might prejudice him, sent a Letter to Mr. Draper, in which he said they were printed from the Dublin Edition.—Query, from what Copy was the Dublin Edition printed?



Lord *Bolingbroke* do recommend to and advise Mr. *Mallet* to pay Mr. *Francklin* the Sum of two hundred Guineas ; for which Sum we do advise the said Mr. *Francklin* to sign a general Release to the said Mr. *Mallet* for all Claim he now has on the Quarto Edition of the said Works of the late Lord *Bolingbroke*, or shall have on any future Editions in any Size, either on his own Account for his Claim on the following Pieces, printed in the said Work, viz. *The Occasional Writer*; *The Vision of Camilic* ; *Answer to the London Journal* ; *Answer to the Defence* ; *Remarks on the History of England*, by *Oldcastle* ; *The Final Answer* ; *Dissertation upon Parties* ; or for the Claim of any other Person on the said Pieces. And the said Mr. *Francklin* we do advise to give the said Mr. *Mallet* a Bond in the penal Sum of two hundred Pounds to indemnify him against the Claim or Claims of any other Person or Persons to the above Pieces. And we do advise that Mr. *Faancklin* be permitted to continue selling, or to reprint and sell the above Pieces separate from the Works of the said late Lord *Bolingbroke*, in the same Manner and with the same Titles he has prefix'd to the last Editions and sold them by——We mean that Mr. *Mallet* may sell, in the present Edition in Quarto and reprint and sell in any Edition in any Size whatever, the abovenamed Pieces, together with the other Works of Lord *Bolingbroke*, but not separately.——And Mr. *Francklin* may sell the said Pieces separately and as they are now sold by the said Mr. *Francklin*, but not with any other Pieces wrote or supposed to be wrote by the said late Lord *Bolingbroke*. And we also recommend to Mr. *Francklin* to permit an Advertisement to be inserted in the public News-Papers that he does not design to publish an Edition of the said late Lord *Bolingbroke*'s Works in any Size, or at any Price whatever.

SOMERSET DRAPER.  
THOMAS WOTTON.

Mr. *Francklin* imagined the Affair now concluded, and only Time was wanting to put the Award in Execution, but to his great Surprise, saw on the 3d of *April* following (six Days after the Arbitrators had deliver'd their Award) a Notice sent to the Referees in these Words ;

Mess. WOTTON and DRAPER,

I do give you Notice that I do retract and revoke all my Submission to the Award of you or either of you touching any Controversies or Differences between me and Mr. *Richard Francklin*,

*Francklin*, and do hereby discharge you and each of you from proceeding to make any such Award. Witness my Hand this third Day of *April*, one thousand seven hundred and fifty-four.

DAVID MALLET. †

THESE are the Facts, which have been recited as briefly as possible. Whether *Mr. Mallet* or *Mr. Francklin* might either of them have taken better Measures to ascertain their several Claims, or in what Manner the Law might determine them, are Points we apprehend foreign to the Purpose; the only Thing to be laid before the Public being no more than this plain Question,--Whether, after a solemn Agreement, sign'd by both Parties, to refer the Affair to Arbitration, and after an Award given to both, either of them could recede from it? *Mr. Francklin* on his Part submitted to the Award: *Mr. Mallet* refused.

THE Reflections, that the Reader must make on this Transaction, are so obvious that it would be unnecessary to point them out. It will be sufficient to observe, that it is Matter of great Astonishment to see, under *Mr. MALLET's own Hand*, a Notice sent to his own Referee to *retract* and *revoke* what UNDER HIS OWN HAND likewise he had solemnly engaged, as a Man of Honour, to agree to.

† *Mr. Mallet here owns the Award made, and revokes his Submission to it, and then bids the Referees not proceed to do what was already done.*

F I N I S.